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BOOK REVIEWS

Centralization and the Law. Scientific Legal Education: An Illustration. With an Introduction by MELVILLE M. BIGELOW. Boston: Little, Brown & Co., 1906. 8vo, pp. xviii+296.

The eight lectures here brought together were delivered before the students or faculty of Boston University Law school, "on various recent occasions . . . as part of the plan of legal extension now on foot there." Two of the lectures and an introduction upon "The Extension of Legal Education," have been written by Dean Melville M. Bigelow; the remaining lectures have been prepared by Messrs. Brooks Adams, Edward A. Harriman, and Henry S. Haines.

The conception of law set forth in these lectures appears to be a somewhat radical departure from the classical conception. The law is not defined as a body of principles, nor, according to Blackstone, as the will of a sovereign. "Law is the resultant of social forces and the Sovereign is the vent through which this resultant expresses itself." It is what the dominant social forces in the community deem reasonable and desirable. It is not a code established immutably for all time, but is in the making day by day, as the play of social forces may determine.

Whether the social resultant expresses itself through a prophet like Moses, or an emperor like Cæsar, or a military oligarchy like the twelfth-century barons of England, or a moneyed oligarchy like the modern British Parliament, the result is the same. The dominant class, whether it be priests or usurers or soldiers or bankers, will shape the law to favor themselves, and that code will most nearly approach the ideal of justice of each particular age which favors most perfectly the dominant class. An absolute dominion such as the power of the conqueror or the slaveholder is not infrequently attributed to a divine dispensation. It follows that the law is an example of Darwin's generalization of natural selection. Those fittest to survive in each particular environment prosper, those unfit suffer in proportion to their unfitness; and nowhere is the working of this process more evident than in the development of our civilization, which, in its passage from the Middle Ages, elaborated conceptions of contract as its basis, and which now, under new forms of competition, is discarding them.

It follows that in a commercial and industrial age, such as the present, with economic forces in the ascendant, the law of the land is the law merchant and industrial; it is what capitalistic organizations deem reasonable and desirable, at least so long as these organizations are sufficiently powerful to control. As economic forces tend to centralization of power in the hands of a few, a condition of unstable equilibrium may in the end result from the unchecked working of economic forces. The many who are being "reduced to servitude" may combine in opposition. The demand for railway regulation and state ownership is a concrete case in evidence of rising opposition today to one form of organization. There is, moreover, no escape from monopoly, except through government ownership; for under free competition the fittest survives and ultimately kills off all competitors, thereby establishing a monopoly. While under any organization of competitors to prevent competition among themselves, and to protect the weak, monopoly is the direct and immediate consequence—in the one case the monopoly is under control of the man fittest and ablest to control; in the other, under control of the unfit, organized. It follows that, whether the law maintains competition or not, the ultimate outcome of economic forces is monopoly.

Suppose competition to be forced to the end, it must result in monopoly by survival. Suppose competition to be checked to protect the weak, combination to control prices must result.

It is pointed out that legislation in the United States and in England is undertaking more or less tentatively the control of prices of articles where monopolistic conditions already obtain, and that this movement is coupled with a demand for state ownership of public utilities. It is further suggested that similar demands in the past have led to the confiscation of property, and may do so in the future. "In theory we deny that confiscation occurs under our laws, but in fact confiscation forms a regular branch of our jurisprudence which the courts undertake to supervise."

The most superficial acquaintance with history suffices to convince the reader that property which is obnoxious and ill defended is generally confiscated; and if obnoxious property escapes confiscation, it is because of the vigor with which attack is repelled. Thus conventual property in England was confiscated because the monks were weak and rich, the guilds were robbed because the guilds decayed; in the French Revolution the nobility lost their land because they were first expelled, and precisely the same thing

happened to the Tories in the American Revolution. They could not maintain their ground, and were wealthy. In the Civil War the slaves were confiscated because slavery was obnoxious, though very well defended; and even in times of tranquillity private ownership is rarely respected when the property is, for some reason, unpopular, and the possessors thereof feeble relatively to the prejudice against them.

The economic philosophy underlying these essays is of a somewhat conventional, if not dangerously superficial, order, which leads one to remark how rarely is an excellent lawyer or judge a passing fair economist! It is of the sort which can conceive of one man, by virtue of a certain court decision, "fixing forever upon the people" of a certain state "the burden of paying interest upon 100 per cent. of water in the form of bonds"—as though railway rates were determined out of hand by courts of law, or Mr. Hill, or by some magnate wielding the power to reduce a people to servitude.

A Short Account of England's Foreign Trade in the Nineteenth Century: Its Economic and Social Results. By ARTHUR L. BOWLEY, M.A. With ten Statistical Diagrams. Revised Edition. London: Swan Sonnenschein & Co., 1905. 8vo, pp. x+165.

In this revised edition of the author's essay upon England's foreign trade one does not find any material changes other than those in the charts and tables which have been brought down to 1903. In fact, the same plates have been used as for the former edition, and changes introduced in the form of an appendix of notes, in which some further statistical data are given. The author states in a prefatory note that he "does not feel bound to support every opinion he advanced at that date [1894]," and it seems unfortunate that he should not have made his revision of this new edition sufficiently thorough to save himself the necessity of making such an apology. Where the essay deals with tariff questions, the author points out that "statements which were commonplace in 1903 will in 1905 appear dogmatic." To avoid undertaking a "long historical and controversial analysis," the treatment of imperial tariff and trade relations has been left unmodified. The last chapter, upon "England's Present Position," stands as originally written, except where tables and charts are continued to a later date. The author explains that rewriting this chapter, which comprises rather more than one-quarter of the essay, "would have involved questions of too complex a